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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1139

WILLIAM I. HEFFRON, trustee in bankruptcy of the estate
of Bert O. Adams, doing business as Adams-Sheetz
Drive Inn Stand, Bankrupt, and Ruth Adams,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit,
and Brief in Support Thereof.

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Drive Inn Stand, Bankrupt, and Ruth Adams,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit.

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Your petitioners, William I. Heffron (hereinafter referred to as trustee), trustee in bankruptcy of the estate of Bert O. Adams, doing business as Adams-Sheetz Drive Inn Stand, bankrupt, and Ruth Adams, pray that a writ of certiorari issue to review the final judgment of the United States Circuit Court of Appeals for the Ninth Circuit determining: (1) that a wife in the State of California, who files a homestead declaration on joint tenancy property, cannot prevail as to one-half of the homestead

exemption over the United States government when bankruptcy of the husband intervenes as to the husband's one-half of the property; and (2) determining that Section 67, particularly subdivision b (11 U. S. C., 1940 ed., Sec. 107) gave the United States government a statutory lien which in bankruptcy was superior to the exemption granted to the bankrupt by Section 6 (11 U. S. C., 1940, Chp. 3, Sec. 24) and therefore eliminated the exemption of a properly declared state homestead.

Opinions Below

The opinion of the Circuit Court of Appeals [R. 62 *et seq.*] is not yet reported. The judgment of the District Court [R. 36 *et seq.*] merely affirmed the referee in bankruptcy, without an opinion.

Jurisdiction

The judgment of the Circuit Court of Appeals for the Ninth Circuit was filed on January 7, 1947 [R. 65]; the petition of Ruth Adams for rehearing was denied on February 4, 1947 [R. 66] and the petition of William I. Heffron, as trustee, was denied on February 6, 1947 [R. 66]. An order was made on the 6th day of February, 1947, by the said Circuit Court of Appeals, staying the issuance of the writ of mandate to March 10, 1947. The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938, 28 U. S. C. A., Sec. 347(a); and under Section 24(c) of the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 553; as amended by the Act of June 22, 1938, c. 575, Sec. 1, 52 Stat. 854; 11 U. S. C. A. Supp., Sec. 47(c).

Questions Presented

1. Where California state statutes permit a wife to declare a homestead on the husband's one-half of joint tenancy property, and the husband subsequently is adjudicated bankrupt, can the bankruptcy court allocate any portion of the wife's homestead estate in the husband's one-half of the homesteaded property to the payment of creditors of the husband's estate?

2. In a bankruptcy proceeding where a dispute arises between claimants, should not a federal court give effect to state law governing their substantive rights?

3. Do the provisions of Section 67 of the Bankruptcy Act supersede the expressed overall intent of Congress to grant to a bankrupt the state homestead exemption as set forth in Section 6 of the said Act and thereby justify the application of homesteaded property to the payment of tax claims by the United States?

Statutes Involved.

1. *Section 1238* of the Civil Code of the State of California (1872), as amended by Cal. Stats. (1874), p. 229; (1929) p. 339, ch. 187; (1935) ch. 444; (1937) ch. 570:

“(FROM WHAT HOMESTEAD MAY BE SELECTED: PROPERTY DEFINED.) If the claimant be married, the homestead may be selected from the community property or the separate property of the husband or, subject to the provisions of section 1239, from the property held by the spouses as tenants in common or in joint tenancy or from the separate property of the wife. When the claimant is not married, but is head of a family, within the meaning of section 1261, the homestead may be selected from any of his or her property. If the claimant be an unmarried person,

other than the head of a family, the homestead may be selected from any of his or her property. Property, within the meaning of this title, includes any freehold title, interest, or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive."

2. *Section 1240 of the Civil Code of the State of California (1872):*

"EXEMPT FROM FORCED SALE. The homestead is exempt from execution or forced sale, except as in this title provided."

3. *Section 1243 of the Civil Code of the State of California (1872):*

"HOW ABANDONED. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;

2. By the claimant, if unmarried."

4. *Section 1265 of the Civil Code of the State of California (1872), as amended by Cal. Stats. (1874) p. 231; (1880) p. 8; (1909) p. 972, and (1911) p. 6:*

"(WHEN PROPERTY BECOMES HOMESTEAD: DISPOSITION IN CASE OF DEATH: EXEMPTION OF PROPERTY OR PROCEEDS FROM LIABILITY FOR DEBTS.) From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the separate property of the spouse making the selection or joining therein, the land so selected, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other

cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale."

5. *Section 6 of the Bankruptcy Act (11 U. S. C., Chap. 3, Sec. 24) reading as follows:*

"EXEMPTIONS OF BANKRUPTCY. This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State"

6. *Section 64 of the Bankruptcy Act (11 U. S. C., Chap. 7, Sec. 104) reading as follows:*

"DEBTS WHICH HAVE PRIORITY.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; * * * (2) wages, * * * (inapplicable) (3) (inapplicable) (4) taxes legally due and owing by the

bankrupt to the United States or any State or any subdivision thereof; *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court. *And provided further*, That, in case any question arises as to the amount or legality or any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in (is) entitled to priority, * * * (11 U. S. C. 1940 ed., Sec. 104)."

7. *Section 67, subdivision (b) of the Bankruptcy Act (11 U. S. C., Chap. 7, Section 107) reading as follows:*

"LIENS AND FRAUDULENT TRANSFERS. (b) The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under Chapter X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court."

Statement.

The facts in the case at bar are not disputed. On December 21, 1942, Bert O. Adams and Ruth Adams, husband and wife, residents of the state of California, acquired title, as joint tenants, to a home in Inglewood, California [R. 62]. By a duly executed and acknowledged declaration which was filed for record on November 5, 1943, they selected the said real property as their homestead [R. 23-24]. Prior to June 2, 1944, Federal taxes totalling more than \$12,000.00 were assessed against Bert O. Adams, only [R. 10]. On June 2, 1944, Bert O. Adams was adjudged a bankrupt [R. 4], and William I. Heffron was ultimately appointed and qualified as trustee in said bankruptcy. Pursuant to the stipulation of all interested parties, the referee approved a sale of said real property on December 6, 1944 [R. 13-19], reserving the right to determine the respective claims of the aforesaid trustee, Bert O. Adams, Ruth Adams, and the United States of America. A memorandum opinion was filed by the said referee on February 27, 1945, and the formal order involved in the within petition was signed on April 26, 1945 [R. 36-38]. The United States duly prosecuted a review to the District Court, which court entered a judgment, without opinion, affirming the referee [R. 50-51]. The United States then prosecuted an appeal to the Circuit Court of Appeals for the Ninth Circuit and on January 7, 1947, this Court filed an opinion reversing the judgment of the District Court affirming the referee, and remanding the case for further proceedings pursuant to said opinion. Petitions for rehearing were duly filed before said Circuit Court by Ruth Adams and by William I. Heffron, as trustee, and said petitions were each re-

spectively denied on February 4, 1947 [R. 66], and February 6, 1947 [R. 66-67].

The factual issues are relatively simple: Out of the \$8,935.92 the referee first allocated one-half thereof, \$4,467.96 to Ruth Adams as her separate property under the joint tenancy; then the referee allocated one-half of the state homestead exemption, \$2,500.00, to Ruth Adams, out of the remaining \$4,467.96, making a total allowance of \$6,967.96 to Ruth Adams; the balance of \$1,967.96 was allocated to the United States on its lien tax claims. The Circuit Court, by its judgment, directed the payment of \$4,467.96, each, to Ruth Adams and the United States [R. 62-64].

Reasons for Granting the Writ.

1. Nearly every bankruptcy filed contains a prayer for allowance of exemptions under State laws, including homesteads, pursuant to Section 6 of the Bankruptcy Act, and it appears that until this decision of the Circuit Court of Appeals no other court has held that the statutory lien granted to the United States by Section 67(b) of the Bankruptcy Act gives the United States a prior lien, in bankruptcy, over property declared exempt by State law.

2. The economy of our nation might be affected since under the decision of the Circuit Court of Appeals a small home owner would have better protection by always owing money on a trust deed than by paying for his home and filing a declaration of homestead.

See *Matter of Fohnestock Co.* (D. C. 1925), 7 F. (2d) 777 at p. 779, 5 A. B. R. (N. S.) 468 at 471.

3. The decision of the Circuit Court of Appeals is in direct violation of the expressed overall intention of Congress to provide for the rehabilitation of the bankrupt by allowing him both the federal and his state exemptions, pursuant to Section 6 of the Bankruptcy Act.

The decision of the Circuit Court of Appeals is therefore contrary to decisions of this court considering analogous problems involving the interpretation of other sections of the Bankruptcy Act when such interpretation might possibly limit the application of Section 6 of the Bankruptcy Act.

Holden v. Stratton (1905), 198 U. S. 202;

Brandt v. Mayhew (C. C. A. 9th, 1914), 218 Fed. 422, 33 A. B. R. 845; ●

Collier on Bankruptcy, 14 Ed. Vol. 1, p. 796.

4. The decision of the Circuit Court of Appeals conflicts with the fundamental rules of law heretofore enunciated that state law determines the ownership of property subject to its jurisdiction, and a wife's property cannot be taken for her husband's taxes.

Poe v. Sanborn (1930), 282 U. S. 101;

Jones v. Kemp (C. C. A. 10th, 1944), 144 F. (2d) 478, at 480;

Kyle v. McGurk (C. C. A. 3rd, 1936), 82 F. (2d) 212;

Cannon v. Nicholas (C. C. A. 10th, 1935), 80 F. (2d) 934.

In this regard the decision of the Circuit Court of Appeals conflicts with the statutes and decisions of California holding that the filing of the declaration of home-

stead under the factual situation set forth herein gives to the wife a \$2500.00 exemption in the husband's one-half of the joint tenancy property. *Sections 1238, 1240, 1265 of the Civil Code of the State of California.*

Vandall v. Teague (1904), 142 Cal. 71;

Barber v. Babel (1868), 36 Cal. 11;

Walton v. Walton (1943), 59 Cal. App. (2d) 26,
and cases cited therein;

Baker v. Superior Court (1932), 120 Cal. App. 1;

Corey v. Matot (1920), 47 Cal. App. 184;

Mills v. Stump (1912), 20 Cal. App. 84 at 86.

And see,

Russell v. Laughorn (C. C. A. 9th), 20 F. (2d)
95.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the judgment of the Circuit Court of Appeals for the Ninth Circuit.

Dated: March 17, 1947.

WILLIAM I. HEFFRON, Trustee,
RUTH ADAMS,

Petitioners,

By MARTIN GENDEL,
Counsel for Petitioners.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

No.

WILLIAM I. HEFFRON, trustee in bankruptcy of the estate
of Bert O. Adams, doing business as Adams-Sheetz
Drive Inn Stand, Bankrupt, and Ruth Adams,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI.**

May It Please the Court:

Opinions Below.

The opinion of the Circuit Court of Appeals [R. 62-64],
is not yet reported.

The District Court did not give an opinion, but merely
affirmed the order of the Referee [R. 50-51].

Jurisdiction.

The grounds upon which the jurisdiction of this court
is invoked are stated in the petition at page 2.

Statement of the Case.

The facts appear in the petition at page 7 and 8, and
in the interest of brevity are not repeated herein.

Specifications of Error.

The Circuit Court of Appeals erred:

1. In failing in a bankruptcy proceeding to subordinate the lien rights of the United States, for taxes, under Section 67(b) of the Bankruptcy Act, to the setting aside as exempt property to a bankrupt of his prior properly recorded state declaration of homestead, pursuant to the provisions of Section 6 of the Bankruptcy Act.

2. In failing to recognize California State statutes and decisions giving the wife, as her separate property, a \$2500.00 (one-half of total allowance of \$5000.00 as the law stood in California in 1943, when the homestead declaration was recorded) interest in the husband's one-half of the real property where the declaration is made on joint tenancy property.

Summary of Argument.

1. The provisions of Section 6 of the Bankruptcy Act granting exemptions to bankrupts ^{are} not subordinated to the provisions of Section 67(b) of the Bankruptcy Act.

2. The Circuit Court of Appeals failed to recognize that state law determines the ownership of property subject to its jurisdiction.

(a) A wife's separate property, under both California and Federal Law, cannot be sequestered for her husband's taxes.

3. Petitioner, Ruth Adams, is entitled, as her separate property, to the additional sum of \$2500.00 representing that portion of her homesteaded estate properly allocated to the husband's one-half of the joint tenancy property.

ARGUMENT.

1. The Provisions of Section 6 of the Bankruptcy Act¹ Compel the Setting Aside to the Bankrupt, as Exempt, the Real Property Covered by a State Declaration of Homestead Properly Executed, Acknowledged and Recorded Prior to the Commencement of the Bankruptcy Proceedings; the Lien for Taxes Granted to the United States, Under Section 67(b)² of the Bankruptcy Act, Is Subordinated to This Right of Exemption.

(a) Our Federal Courts have heretofore recognized that Congress, by enacting Section 6 of the Bankruptcy Act, intended to give to the bankrupt an opportunity to rehabilitate himself, which is predicated on the allowance of exemptions of personal and real property granted by his State and by Federal Laws. These rights of exemption have been held superior to claims such as those recognized by the Circuit Court in its opinion and asserted by the United States in the instant case.

Holden v. Stratton (1905), 198 U. S. 202;

Brandt v. Mayhew (C. C. A. 9th, 1914), 218 Fed. 422; 33 A. B. R. 845;

Collier on Bankruptcy, 14th ed. Vol. 1, p. 796.

(b) In the final analysis, if the decision of the Circuit Court of Appeals is not reversed this decision may lead the small business man to always maintain a trust deed on his home since such a prior recorded encumbrance would give him security

¹11 U. S. C., Chap. 3, Sec. 24.

²11 U. S. C., Chap. 7, Sec. 107.

against tax claims which security he could not obtain by payment for his home, the declaration of a homestead, and then adjudication in bankruptcy.³

It is of interest to note that the United States has cited no reported case sustaining its position or the ruling of the Circuit Court concerning the comparative superiorities of Section 6 and Section 67(b) of the Bankruptcy Act.

2. It Is a Fundamental Rule That State Law Determines the Ownership of Property Subject to Its Jurisdiction, and a Wife's Separate Property, Under Both California and Federal Law, Cannot be Taken for Her Husband's Taxes.

The decision of the Circuit Court of Appeals failed to give any consideration to the fact that its judgment clearly appears to violate these basic principles.

Poe v. Sanborn (1930), 282 U. S. 101;

Jones v. Kemp (C. C. A. 10th, 1944), 144 F. (2d) 478, at 480;

Kyle v. McGurk (C. C. A. 3rd, 1936), 82 F. (2d) 212;

Cannon v. Nicholas (C. C. A. 10th, 1935), 80 F. (2d) 934.

And see,

Russell v. Laugharn (C. C. A. 9th, 1927), 20 F. (2d) 95.

³*Matter of Fohnestock Co.* (D. C., 1925), 7 F. (2d) 777, at 779, 5 A. B. R. (N. S.), 468 at 471.

3. **The Circuit Court of Appeals Failed to Give Any Consideration to the Statutes and Decisions of the State of California Whereby Ruth Adams Was Entitled to Not Only One-half the Joint Tenancy Property But Also to the Sum of \$2,500.00 Representing One-half of the State Homestead Exemption.**

This legal conclusion is enforceable in the instant case notwithstanding the determination by this court of the relative merits of Section 6 and Section 67(b) of the Bankruptcy Act. It is a right to the wife, as a joint tenant, granted to her by state laws and decisions, creating her claims as separate property not subject to her husband's debts either in bankruptcy, or otherwise.

Civ. Code of the State of California, Sections 1238, 1240, 1265;

Vendall v. Teague (1904), 142 Cal. 471;

Barber v. Babel (1868), 36 Cal. 11;

Walton v. Walton (1943), 59 Cal. App. (2d) 26;

Baker v. Superior Court (1932), 120 Cal. App. 1;

Corey v. Matot (1920), 47 Cal. App. 184;

Mills v. Stump (1912), 20 Cal. App. 84 at 86.

And see,

Russell v. Laugharn (C. C. A. 9th, 1927), 20 F. (2d) 95.

The State of California has recognized the legal institution of joint tenancy and the Circuit Court of Appeals should have given consideration to the institution in rendering its judgment.

Conclusion.

From a purely pedantic standpoint, petitioners are unable to ascertain the reason for the Circuit Court of Appeals using the alleged priority of Section 67(b) as the basis for denying the exemptions granted by Section 6. On the facts, this ruling—of vital importance in Bankruptcy administration—is purely dictum. If there is a separate property right of homestead, enforceable by the wife, one-half to come from the husband's one-half of the joint tenancy—then this right was fixed under California State law and the bankruptcy cannot change it. (*Walton v. Walton* (1943), 59 Cal. App. (2d) 26.) The claims of Ruth Adams are not predicated on any stipulation or waiver given by the bankrupt after the commencement of bankruptcy. On the other hand, the bankrupt did waive to the estate whatever right to a homestead he had acquired and therefore there is no reason to bring Section 6 into play because the bankrupt is not claiming any exemption. If there is to be a binding ruling on the issue of Sec. 67(b) versus Sec. 6—let it come from a case which involves proper facts. Therefore, there obviously exists a more than usual compelling reason for this court to take jurisdiction, eliminate the dictum contained in the opinion of the Circuit Court of Appeals and reverse the Circuit Court on the basis that it failed to follow controlling State law.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted and that this Honorable Court should review the decision of the United States Circuit Court of Appeals for the Ninth Circuit and finally reverse it.

Dated: March 17, 1947.

MARTIN GENDEL,

Counsel for Petitioners.